

Lance J. Hendron  
Nevada State Bar No. 11151  
Guymon & Hendron  
625 S. Eighth Street  
Las Vegas, Nevada 89101  
Phone: (702) 758-5858  
Email: [lance@ghlawnv.com](mailto:lance@ghlawnv.com)  
Local Counsel for Jan Fuechtene

Zachary Lee Newland  
Texas State Bar No. 24088967  
Brandon Sample PLC  
P.O. Box 250  
Rutland, Vermont 05702  
Phone: (802) 444-4357  
Email: [zach@brandonsample.com](mailto:zach@brandonsample.com)  
Counsel *Pro Hac Vice*  
For Jan Fuechtener and F.A.J.R. Magic Trust

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

**Plaintiff.**

V.

Case No. 2:16-cr-00100-GMN-CWH

JAN ROUVEN FUECHTNER.

Defendant.

## **RESPONSE IN OPPOSITION TO FORFEITURE**

Defendant, Jan Rouven Fuechtener (“Fuechtener”), by and through his undersigned counsel, respectfully submits this response in opposition to the Government’s proposed order of forfeiture. Fuechtener’s criminal conviction is currently on direct appeal before the U.S. Court of Appeals for the Ninth Circuit.

1 Fuechtener has put forward a number of claims which directly put at issue his  
2 guilty plea. *See United States v. Fuechtener*, No. 19-10097 (9th Cir. 2019).

3       Further, even if the U.S. Court of Appeals were to affirm the judgment of the  
4 U.S. District Court it is anticipated that Fuechtener would file a timely motion to  
5 vacate sentence under 28 U.S.C. § 2255. Under 28 U.S.C. § 2255(f)(1), a § 2255  
6 motion must be filed within one year of “the date on which the judgment of  
7 conviction becomes final.” 28 U.S.C. § 2255(f)(1). Fuechtener’s conviction is not yet  
8 “final” for § 2255 purposes. *See Clay v. United States*, 537 U.S. 522 (2003). Thus, it  
9 would be premature to permanently forfeit devices and property in this case.

10      The United States already has the exclusive custody of these materials and  
11 will continue to have that custody of those items irrespective of any ruling. There is  
12 no danger of these items dissipating or otherwise losing intrinsic value should the  
13 Court elect to stay imposition of the forfeiture order. The digital items sought to be  
14 forfeited contain evidence that goes to the heart of Fuechtener’s professed innocence  
15 claim: was there someone else in the home who was actually accessing the illicit  
16 material instead of Fuechtener?

17      This is a factual dispute that cannot be resolved should the United States  
18 obtain forfeiture and dispose of these items. Fuechtener *is not* trying to re-litigate  
19 the propriety of the forfeiture order itself at this time. Instead, Fuechtener is asking  
20 the Court to exercise its considerable equitable power and decline to issue an  
21 irrevocable forfeiture ruling until Fuechtener’s appeal and § 2255 proceedings are

1 finished. Otherwise, Fuechtener will be unable to secure the preservation of  
2 evidence that may be necessary at any retrial or in a § 2255 proceeding.

3 Wherefore, the Court should decline to enter the final order of forfeiture in  
4 this case in order to preserve any evidence which exists on the digital devices for  
5 further judicial proceedings.

6  
7 Respectfully submitted,

8 /s/ Lance J. Hendron  
9 Lance J. Hendron  
10 Nevada State Bar No. 11151  
11 Guymon & Hendron  
12 625 S. Eighth Street  
13 Las Vegas, Nevada 89101  
14 Phone: (702) 758-5858  
15 Email: [lance@ghlawnv.com](mailto:lance@ghlawnv.com)

16 Local Counsel for Jan Fuechtener  
17

18 /s/ Zachary L. Newland  
19 Zachary L. Newland  
20 Senior Litigation Counsel  
21 **Brandon Sample PLC**  
22 P.O. Box 250  
23 Rutland, Vermont 05702  
Phone: (802) 444-4357  
Email: [zach@brandonsample.com](mailto:zach@brandonsample.com)  
Texas Bar: 24088967  
<https://brandonsample.com>

24 Counsel *Pro Hac Vice* for Jan Fuechtener  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this  
9th day of March 2020, via CM/ECF on all counsel of record.

/s/ Zachary L. Newland  
Zachary L. Newland

## **CERTIFICATE OF CONFERENCE**

Prior to the filing of this motion I hereby certify that I attempted to confer via email and telephone with opposing counsel to ascertain their position on the merits of the relief sought herein. Counsel for the United States did not respond prior to the filing of this document with the court.

/s/ Zachary L. Newland  
Zachary L. Newland